

Ministry of the
Environment

733 Exeter Road
London, ON N6E 1L3
Tel.: (519) 873-5000
1-800-265-7672
Fax: (519) 873-5020

Ministère de
l'Environnement

733, chemin Exeter
London, ON N6E 1L3
Tél. : (519) 873-5000
1-800-265-7672
Téléc. : (519) 873-5020



November 15th, 2007

Ontario Energy Board
2300 Yonge Street
27th, Floor
Toronto, Ontario
M4P 1E4

Attention: Mr. Josh Wasylyk, Applications Analyst

Re: Union Gas Limited

**Leave To Construct Natural Gas Pipeline To East Windsor Cogeneration
Centre, Ontario Energy Board No. EB-2007-0708**

Dear Mr. Wasylyk:

It is this Ministry's understanding, from Union Gas Limited's letter of September 14th, 2007 addressed to this Ministry, that Union Gas Limited has applied for an order of the Ontario Energy Board (OEB) for leave to construct approximately five kilometres of 12 inch Nominal Size Pipe (NPS) natural gas pipeline in the City of Windsor to meet the natural gas service requirements of the proposed East Windsor Cogeneration Centre. The proposed facilities are located in the City of Windsor.

Staff of both this Ministry's Southwestern Region, and Sarnia District Offices, have reviewed Azimuth Environmental Consulting Inc.'s July 2007 report entitled "East Windsor Cogen Centre Pipeline Project Environmental Report" (The Project Environmental Report). As a consequence of that review, this Ministry has the following comments for the Ontario Energy Board, and by copy of this letter, Union Gas Limited's, due consideration.

The Ministry has concerns with regard to the preferred route for the pipeline in the area of the Grand Marais Drain. The Project Environmental Report identifies that sections of the proposed pipeline would be located on the industrial lands on the Hydro One and Lafarge lands (among other industrial lands, easements and road allowances).

The Ministry of the Environment (MOE) has completed an assessment of this area of the Grand Marais Drain that has identified an area of PCB and metals contamination in a localized area of sediments and dredged materials in and along the Grand Marais Drain between the CPR crossing and Chrysler Centre Road. Remediation of this area of contamination is presently being planned with the target for the completion of the work in the summer of 2008.

In this regard, it will be necessary for the proponent to consult with the Project Leads (the City of Windsor and a Private Partner) to ensure that the pipeline construction project does not impact the remediation work. Should the pipeline construction be proposed to be carried out prior to the remediation, the proponent must consult with the Ministry of the Environment and the Project Leads to determine how the work will be carried out to ensure that the contaminated soils are appropriately dealt with and that there will be no impact to the Grand Marais Drain or to surrounding properties.

MOE sampling in soils adjacent to the Grand Marais Drain in the area identified in the Project Environmental Report has identified elevated levels of metals in the soils on surrounding private properties. A report of these results has been made available to Hydro One Networks, Chrysler Canada Ltd., Enwin Utilities, Lafarge Canada, Canadian Pacific Railways and Canadian National Railways. All of these companies own property in the area of the Drain between the CPR crossing and Chrysler Center Road.

Although the July 2007 Project Environmental Report identifies an exchange of information with directly affected Lafarge and Hydro One with an indication that “discussions will continue”, it is critical that the proponent carry out further consultation with all affected property owners to ensure that all appropriate action is taken to determine the extent of contamination in the soils and to ensure that any excavation into or through the impacted soils contains measures to deal with the contaminated materials, to appropriately manage and dispose of any excavated materials and to insure that no offsite or adverse effect results from the pipeline construction.

An issue that must also be considered and addressed by the proponent is the potential for the pipeline corridor to collect contaminants and serve as a conduit for movement of contaminants to other locations. Again, further consultation may be necessary with the landowners and measures should be in place to prevent any potential for the migration of contaminants due to the construction and operation of the pipeline.

Also, Section 168.3.1 of the *Environmental Protection Act* R.S.O. 1990 (EPA), as amended and Section 14 of *Ontario Regulation 153/04* (O.Reg. 153/04) as amended, prohibits the change of use of a property to a more sensitive use, unless a Record of Site Condition (RSC) has been filed in the Environmental Site Registry. This prohibition is

commonly referred to as the "mandatory filing" provision and came into force October 1, 2005.

For those changes in land use not identified in Section 14 of Regulation 153/04, obtaining a Record of Site Condition is not mandatory, unless it has been made a condition of approval under some other piece of legislation or approval authority (such as but not limited to the Planning Act or Building Code). MOE recommends that Union Gas Limited, or Union Gas Limited's consultant on behalf of Union Gas Limited review Regulation 153/04 to determine if any requirements of Regulation 153/04 apply to this project.

The MOE published a Waste Disposal Site Inventory Report in June of 1991. A CD copy of the Ministry's June 1991 Waste Disposal Site Inventory can be obtained from this Ministry's Public Information Centre and can be reached by phoning 1-800-565-4923 or (416) 325-4000.

The June 1991 Waste Disposal Site Inventory lists the UTM Coordinates of each waste site. According to MOE's June 1991 Waste Disposal Site Inventory, Closed Waste Site X-6065, located in the general vicinity of Drouillard Road and Seminole Street in the City of Windsor, "appears" to be located within 500 metres of the preferred route for the gas pipeline serving the proposed East Windsor Cogeneration Centre. It is important to note that the MOE 1991 Waste Disposal Site Inventory Report is current to 1991. There could conceivably be more active and former waste disposal sites than that which is presented in the MOE 1991 Waste Disposal Site Inventory itself.

Union Gas Limited, and/or its consultant on behalf of Union Gas may want to consider confirming the information contained in the MOE June 1991 Waste Disposal Site Inventory report, in the field, through on-site investigations using qualified consultant(s). The City of Windsor itself may be aware of other active or closed waste disposal sites not listed therein, and/or Union Gas Limited and/or its consultant might also be aware of additional waste disposal sites as a consequence of site reconnaissance(s) and/or negotiations with private landowners arising from this proposed project.

The MOE's interests regarding the development on or in the periphery of active and closed waste sites is based on Section 46 of the Environmental Protection Act and MOE Guideline D-4.. The MOE's "Guideline D-4 Land Use On or Near Landfills and Dumps" dated April 1994, speaks to both land use within 500 metres of a fill area, and land use beyond 500 metres of a fill area. MOE Guideline D-4 (Publication No. 2158) is available on the MOE internet site at <http://www.ene.gov.on.ca> under "Publications" and "Forms, Manuals and Guidelines" tabs. Any aspect of this project which is either located on, or in the periphery (minimum 500 metres) of any closed or active waste sites, should

take into due consideration MOE Guideline D-4, and Section 46 of the Environmental Protection Act, as applicable.

Section 46 of the *Environmental Protection Act* states:

“46. No use shall be made of land or land covered by water which has been used for the disposal of waste within a period of twenty-five years from the year in which such land ceased to be so used unless the approval of the Minister for the proposed use has been given.”

The MOE recommends that Union Gas Limited, and/or its consultant on behalf of Union Gas Limited review the MOE June 1991 Waste Disposal Site Inventory listings, in the context of the information provided in MOE Guideline D-4, and Section 46 of the Environmental Protection Act, and make a determination as to what impact, if any, the existence of any closed and/or active waste disposal sites situated on or within a minimum of 500 metres of the lands or lands covered by water the subject of this proposal, and any other active or closed waste disposal sites that exist on land or are on lands covered by water within a minimum of 500 metres of the subject property, but are not listed in the June 1991 Waste Disposal Site Inventory, may have on this proposed natural gas pipeline project, including but not necessarily limited to the potential for the pipeline corridor to collect contaminants from any active and/or closed waste sites and serve as a conduit for movement of contaminants to other locations.

The MOE's Sarnia District and Southwest Region have identified shortfalls in some recent proposals where environmental risk from horizontal drilling was not appropriately managed. Of particular concern is the absence of best practices for environmental management (including appropriate characterization and disposal) of drilling muds and past occurrences of break-out and spillage of muds on private properties. The District also has concerns where risk management is necessary to prevent the contamination of the pipeline corridor from historical sources of contamination.

Union Gas Limited's consultant, Azimuth Environmental Consulting, Inc. makes some mention of drilling muds in Section 7.1 of the July 2007 Project Environmental Report, but makes no further mention to the management of the materials nor to contingencies for dealing with potential issues of spillage and disposal. No mention is made in the Environmental Management Manual appended to the July 2007 Project Environmental Report.

In response to the concern for ensuring compliance with appropriate legislation and issues where the Ministry has a direct interest, the MOE's Sarnia District has been providing proponents with a list of legislative highlights, and a list of those issues of

direct interest. I have enclosed copies of those documents to this letter. They are identified as Appendix "A" and Appendix "B" (see attachments). As a minimum, an Environmental Management Plan (EMP) should address the items identified in Appendix "B". Also, an EMP can provide a useful reference document for Ministry District staff to consult in the event of a complaint or a spill. The MOE recommends that Union Gas Limited amend its Environmental Management Manual to reflect the foregoing MOE comments on management (characterization and disposal), breakout, and spillage of drilling muds.

Certain areas of Southwestern Ontario have been infested with the Emerald Ash Borer. Clearing of trees could conceivably be required as part of this project. Should the study area of this project be infested with the Emerald Ash Borer, there may be restrictions on site preparation and the removal of wood from the project site(s) put on the site by the Canadian Food Inspection Agency. As such, MOE recommends that Union Gas Limited, and/or Union Gas Limited's consultant on behalf of Union Gas Limited approach appropriate staff of the Canadian Food Inspection Agency with respect to the Emerald Ash Borer and this project to confirm a) whether or not this area is infested with the Emerald Ash Borer and b) if so to determine what restrictions, if any, exist, and proceed in compliance with any restrictions that exist in this regard.

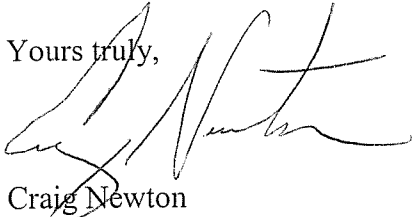
As an initial "starting point", a Canadian Food Inspection staff contact person, and information line with respect to the Emerald Ash Borer is as follows:

The Canadian Food Inspection Agency
1200 Commissioners Rd. E., Unit 19
London, Ontario
N5Z 4R3
Attention: Mr. Bill Lammers, Sr. Inspector
Direct Phone Line: (519) 691-1306 Ext. 133
Cell #: (519) 670-4918
Essex Office #: (519) 776-5483
Email: lammersb@inspection.gc.ca
CFIA webpage: www.inspection.gc.ca
Emerald Ash Borer Information Phone Line: 1-866-463-6017

Finally, the MOE noted an error in the July 2007 Project Environmental Report. On page 5, the report is mistaken in its reference that the Grand Marais Drain / Turkey Creek discharges into the St. Clair River. The watershed discharges into the Detroit River, in the Town of LaSalle.

Should you have any questions with respect to the content of this letter, please feel free to give me a phone call at (519) 873-5014 and I will do my best to answer them.

Yours truly,

A handwritten signature in black ink, appearing to read 'Craig Newton', written over the words 'Yours truly,'.

Craig Newton
Regional Environmental Planner / EA
Ministry of the Environment
Southwestern Region
(519) 873-5014

cc – Ms. Mary Jane Patrick, Administrative Analyst, Regulatory Projects, Union Gas Limited, Chatham
Mr. Bill Wachsmuth, Senior Administrator, Regulatory Projects, Union Gas Limited, Chatham
Mr. Doug Schmidt, Principal Environmental Planner, Union Gas Limited, Chatham
Mr. C. LaFrance, Technical Support Manager, MOE Southwestern Region
Ms. P. Almost, Issues Project Coordinator, MOE Sarnia / Windsor District
Ms. M. LeGrow, Senior Program Support Coordinator, MOE, EAAB, Toronto
Mr. K. Ferguson, Area Supervisor, MOE Windsor Area Office

Attachments (2)

Appendix “A” – Legislation Highlights

Environmental Protection Act, RSO 1990 (EPA)

- Section 14:** establishes general prohibition against creation of "adverse effects"
- Section 27:** prohibits alteration of a waste disposal site without a Certificate of Approval (CofA)
- Section 46:** requires approval for use (e.g., right-of-way) of any landfill which has been non-operational for 25 years or less
- Section 91-123:** establishes notification and cleanup requirements and liability for discharges related to spills
- O.Reg. 347:** regulates waste management
- EPA S.9/ O.Reg. 346/ O.Reg. 419:** regulate atmospheric emissions. Requires a CofA (Air) for construction, alteration, extension or replacement of any plan, structure, equipment, etc., that may result in atmospheric emission of contaminants or altered rate of emission. Contaminants include: gas, particulate, odour, heat, sound, vibration, etc.

Ontario Water Resources Act, RSO 1990 (OWRA)

- Section 30(1):** prohibits discharge of polluting material
- Section 30(2):** requires notification to Minister when polluting material is discharged or escapes into waterbody
- Section 33(1):** areas defined for protection of public water supply
- Section 34(3)(c):** requires a permit for the diversion or storage of water in excess of 50,000 litres per day
- Section 34(4):** requires a permit when water taking interferes with any public or private interest in any water
- Section 53(1):** requires approval of industrial sewage works. The approval is required for the establishment, alteration, extension or replacement of new or existing sewage works. As defined in Section 1, "sewage works" means any works for the collection, transmission, treatment and disposal of sewage, or any part of any such works and "sewage" includes drainage, stormwater, commercial wastes and industrial wastes

Environmental Assessment Act, RSO 1990 (EA)

- Section 3:** requires environmental assessment of undertakings by public bodies. This can affect pipelines on land or easements owned by public bodies.

Appendix “B” - Highlighted Issues and Considerations

Issue	Considerations
Water Quality/Quantity	Surface and groundwater quality and quantity, including water in lakes, rivers, streams, wetlands and in the subsurface, as related to such activities as water crossings, blasting, dewatering, and hydrostatic testing of pipelines (and as it relates to permits to take water (PTTW), diversions, and discharge treatment requirements including such treatment as dechlorination, etc.)
Erosion and Sedimentation	Erosion and sedimentation controls and other practices for managing surface run-off and water crossings, to prevent entry of contaminants into water bodies, including proper discharge of hydrostatic test water and proper siting and disposal of excess fill and excavated material.
Sewage and Water Systems	Sewage treatment and water supply systems, including individual sewage system interference and individual water well interference.
Waste Management	<p>Management of waste materials generated as a result of the proposal, including those from:</p> <ul style="list-style-type: none"> • construction (e.g., waste from equipment maintenance), • excavation (e.g., contaminated sediments/soils, drilling muds), and • pipeline/facility operation <p><u>Note:</u> Management of waste should include collection, storage, transport and disposal</p>
Sediment & Soil Contamination	<p>Management of sediment and soil contamination, including:</p> <ul style="list-style-type: none"> • identification of potential sources of contamination, (eg. Sampling protocols for the detection of historical contamination, as well as an assessment of contaminant sources inherent to the proposal itself, and their associated risk management) • determination of potential pathway(s) for contamination (eg. Existing subsurface pathways such as tile systems, etc.) • identification of control measures, • provision of proper containment, clean-up and disposal of contaminants
Air Quality	Air quality management, including the control of odour, dust and other contaminants during construction, operation (e.g., compressor stations) and contingency activities.
Noise and Vibration	Noise and vibration during construction/operation of facilities (e.g., compressor stations)
Land Use	Incompatible or conflicting land uses which affect or are affected by pipeline proposals (such as: existence of operating or non-operating landfill sites; existing or closed industrial sites both on or adjacent to the right-of-way and/or upstream of a water-crossing; and residences which might suffer adverse impact from noise and/or water well interference)
Stakeholder consultation	Need to evaluate the appropriate degree of consultation with interested parties such as the public, First Nations and government representatives/agencies. Initiated by the proponent in order to provide a two-way communication process to involve interested stakeholders in the planning, implementation and monitoring of an undertaking. The objective is to ensure responsible environmental decision-making, and protection of public interests. The goal of the process is the early identification of issues and their resolution where possible.
Spills	Spills management including contingency planning, notification, clean-up and restoration/restitution if required
Monitoring	Periodic inspection and surveillance of construction activities to ensure compliance with legislative requirements; review of sampling/analytical results to forecast and address environmental risk